

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ST. LOUIS HEART CENTER, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:13-CV-958
)	
GILEAD PALO ALTO, INC.,)	
)	
THE PEER GROUP, INC.,)	
)	
and)	JURY TRIAL DEMANDED
)	
JOHN DOES 1-10,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendant Gilead Palo Alto, Inc. (“Gilead”),¹ by and through its undersigned attorneys, hereby gives notice that it is removing the above captioned case from the Circuit Court of St. Louis County, Missouri, Division 16, Case No. 13SL-CC01203, to the United States District Court for the Eastern District of Missouri, Eastern Division pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446.

BACKGROUND

1. On April 5, 2013, Plaintiff St. Louis Heart Center, Inc. (“Plaintiff”) filed its complaint, styled a “Class Action Petition,” in the Circuit Court of St. Louis County, Missouri, Division 16, Case No. 13SL-CC01203 (the “State Court Action”).
2. Gilead was served with the complaint and summons on April 22, 2013.

¹ Although Gilead Palo Alto, Inc. has been named as a defendant in the above captioned suit, it is not a proper party defendant in this case.

3. This action is timely removed pursuant to 28 U.S.C. § 1446(b) because the notice of removal was filed within thirty (30) days from the date that Gilead was served.

4. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 2.03, a complete copy of all process, pleadings, and orders served upon Gilead in the State Court Action and/or filed in the State Court Action are attached hereto as Exhibit A.

FEDERAL QUESTION JURISDICTION AND VENUE

5. Plaintiff brings suit under the Telephone Consumer Protection Act (the “TCPA”), 47 U.S.C. § 227, and invokes the federal question jurisdiction of this Court. *See* Class Action Petition, Count I, at ¶35 (“Plaintiff brings Count I pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227 . . .”).

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because a claim under the TCPA “aris[es] under” the “laws...of the United States.” *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 752 (2012) (recognizing federal court jurisdiction over TCPA claims brought by individuals and stating “[n]othing in the text, structure, purpose, or legislative history of the TCPA calls for displacement of the federal-question jurisdiction U.S. district courts ordinarily have under 28 U.S.C. § 1331”); *Heller v. HRB Tax Group*, 2012 WL 163842, at *2 (E.D. Mo. Jan. 19, 2012) (finding subject matter jurisdiction over TCPA action and denying motion to remand).

7. In its complaint, Plaintiff also attempts to assert state law claims for conversion (Count II) and for alleged violations of the Missouri Merchandising Practices Act, §§ 407.010 *et seq.* (Count III). Although Plaintiff cannot state cognizable state law claims, the Court has supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1367 because these claims are related to the TCPA claim and are part of the same case or controversy.

8. Venue is proper before this Court because the State Court Action was pending in St. Louis County, Missouri, which is located within the United States District Court of the Eastern District of Missouri, Eastern Division. *See* 28 U.S.C. §§ 105, 1441(a) and 1446(a).

WRITTEN NOTICE OF REMOVAL AND OTHER PROCEDURAL REQUIREMENTS

9. Pursuant to 28 U.S.C. § 1446(d), Gilead will promptly serve written notice of the removal of this action upon Plaintiff and file a Notice of Filing, Notice of Removal with the Clerk of the Circuit Court of St. Louis, Missouri. A true and accurate copy of the Notice of Filing, Notice of Removal is attached hereto as Exhibit B.

10. Co-Defendant The Peer Group, Inc. has consented to the filing of this Notice of Removal by Gilead. *See* Exhibit C.

11. Pursuant to Local Rules 2.02 and 2.03, the Original Filing Form is filed herewith.

12. Pursuant to Local Rules 2.02 and 2.03, the Civil Cover Sheet is filed herewith.

13. Pursuant to Local Rule 2.04, Gilead requests a jury trial on all counts so triable and the statement “Jury Trial Demanded” appears on the face of this Notice.

WHEREFORE, Defendant Gilead Palo Alto, Inc., removes this action from the Circuit Court of St. Louis County, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division, and requests that the Court exercise its subject matter jurisdiction over this matter, and grant such other and further relief as it deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By: /s/Christopher M. Hohn

Christopher M. Hohn, # 44124MO
Felecia R. Williams, #63321MO
One U.S. Bank Plaza, Suite 2600
St. Louis, Missouri 63101
(314) 552-6000 (telephone)
(314) 552-7000 (facsimile)
chohn@thompsoncoburn.com

Attorneys for Defendant Gilead Palo Alto, Inc.

Jonathan K. Stock (OH 0065637)
(jkstock@ocslawfirm.com)
ORGAN COLE + STOCK LLP
1335 Dublin Road, Suite 104D
Columbus, Ohio 43215
Telephone: 614.481.0900
Facsimile: 614.481.0904

Scott A. Carlson (IL ARDC 6228975)
(scarlson@seyfarth.com)
SEYFARTH SHAW LLP
131 South Dearborn Street, Suite 2400
Chicago, Illinois 60603
Telephone: (312) 460.5000
Facsimile: (312) 460.7946

Of Counsel for Defendant Gilead Palo Alto, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was filed electronically with the Clerk of the Court to be served via operation of the Court's electronic filing system this 20th day of May, 2013, as well as by U.S. mail, first class postage prepaid, to the following:

Max G. Margulis, Esq.
Margulis Law Group
28 Old Belle Monte Road
Chesterfield, MO 63017
Telephone: 636.536.7022
Facsimile: 636.536.6652
(maxmargulis@margulislaw.com)

Attorney for Plaintiff St. Louis Heart
Center, Inc.

Brian J. Wanca, Esq.
Anderson + Wanca
3701 Algonquin Road, Suite 760
Rolling Meadows, IL 60008
Telephone: 847.368.1500
Facsimile: 847.368.1501
(bwanca@andersonwanca.com)

Of Counsel to Plaintiff St. Louis Heart
Center, Inc.

Dale M. Weppner
Greensfelder, Hemker & Gale, P.C.
10 South Broadway
Suite 2000
St. Louis, MO 63102
Telephone: 314.241.9090
Facsimile: 314.241.8624
(dmw@greensfelder.com)

Patrick T. Clendenen
Nelson Mullins Riley & Scarborough LLP
One Post Office Square
30th Floor
Boston, MA 02109
Telephone: 617.573.4700
Facsimile: 617.573.4710
(patrick.clendenen@nelsonmullins.com)

Counsel for Defendant The Peer Group, Inc.

/s/ Christopher M. Hohn